IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1943

No. .....

JACK BARG,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

Report of Opinion.

The opinion of the Supreme Court of Illinois (R. pp. 23-29) is reported in *People* v. *Jack Barg,* 384 Ill. 172, and 51 N. E. (2d) 168.

II.

Statement of Grounds on Which Jurisdiction of this Court Is Invoked.

Jurisdiction of this court is invoked in accordance with the provisions of Sections 237 (b) and 240 (a) of the

Judicial Code, as amended by the Act of February 13, 1925 (28 U.S.C.A. 344, 350) and as more particularly set forth in Part B of the preceding Petition.

III.

Statement of the Case.

A concise statement of the case is made in the Petition preceding under Part A.

IV.

Specification of Assigned Errors Intended To Be Argued.

THE SUPREME COURT OF ILLINOIS ERRED:

1. In holding that the constitutional rights of an American citizen as guaranteed by the Fourteenth Amendment, Section 1 thereof, was not violated where the undisputed facts show that the citizen was riding in his automobile, said automobile being driven and operated by another person; said citizen was not violating any law; that said automobile was not speeding; that police officers on bare suspicion stopped the automobile, searched the defendant taking from his person his keys, opening a trunk of the automobile, searching the trunk of said automobile, finding therein goods which later turned out to be contraband goods; arresting the defendant without warrant or other authority of law having no description of the automobile in which the citizen was riding; no description of the citizen or anyone else in the automobile; having no probable cause for searching the citizen's automobile and arresting the citizen; later procuring an indictment upon the goods taken from the citizen's automobile and on motion made to suppress the evidence so taken from the citizen, the trial court denies the motion to suppress and on review the

arrest and search on bare suspicion being held legal by the highest court of the state, which decision conflicting with the former decisions of the State Supreme Court and of this Honorable Court, the citizen on his petition for rehearing claiming rights and immunities under the Fourteenth Amendment of the Federal Constitution, and the highest court of the state construing the Fourteenth Amendment, Section 1 thereof, of the Federal Constitution against the claim of the citizen.

2. In refusing to hold by its decision and judgment that the search of the petitioner's automobile without warrant and without his consent, and upon bare suspicion, the seizure of the property from the defendant's automobile trunk after unlocking the same with keys taken from the person of the defendant under the circumstances above related; the denial of the motion to suppress as evidence the articles illegally seized from the defendant's automobile trunk as above stated, were illegal and violated the due process of law and the equal protection of the laws and provisions of the Federal Constitution.

3. An American citizen is entitled to the protection of the rights, privileges, and immunities guaranteed by the Fourteenth Amendment of the Federal Constitution by every law enforcing officer and court of every city and state of the United States, and where it appears from the record that these rights have been claimed by the citizen and denied him, such action of the judicial or administrative officers is reviewable by this Honorable Court on petition for certiorari to the court denying the citizen such protection.

4. In reversing the judgment of the trial court and remanding the case to the trial court with directions to enter a proper judgment in each cause instead of reversing the judgment.

V.

ARGUMENT.

A.

The search of the petitioner's automobile and the arrest of the petitioner after the search was on bare suspicion and violated Section 1 of the Fourteenth Amendment of the Federal Constitution, Sections 2, 6, and 10, of Article II of the Illinois Constitution.

The undisputed and uncontradicted testimony of Officer Rosensweig who made the arrest of the petitioner shows that the search of the automobile was made after the person of the defendant had been searched and the keys of the petitioner taken from his person (R. p. 8). Rosensweig was the only officer testifying on the motion to suppress the evidence which was denied. He stated that the defendant was not violating any law at the time the automobile was stopped on suspicion and that the driver and operator of the automobile made his escape. The petitioner, an American citizen and person within the jurisdiction of the United States, was entitled to all rights, privileges, and immunities guaranteed by Section 1 of the Fourteenth Amendment. The Officer plainly states that the automobile was stopped on suspicion; that the defendant's person was searched on suspicion; that the automobile was searched on suspicion. Certainly it is too elemental to admit of extended discussion that such conduct as admitted by the officer violated the constitutional rights of the petitioner.

The Supreme Court of Illinois had heretofore held in a long line of cases that an arrest on bare suspicion was illegal, *People* v. *Brewer*, 355 Ill. 348, 359; *People* v. *Henne-*

man, 373 Ill. 603, 606; *People* v. *Dalpe,* 371 Ill. 607, 614; *People* v. *Ford,* 356 Ill. 572; *People* v. *McGurn,* 341 Ill. 632.

The petitioner as a citizen of the United States had a right to rely upon the previous decisions of the Supreme Court of Illinois. The Supreme Court of Illinois had also held in the above cases that where a search is made without warrant or consent and while the citizen is not violating any law in the presence of officers and there is no probable cause for the officer to believe that the citizen is implicated in a particular crime, and contraband goods are found as the result of the illegal search, but timely motion to suppress such evidence, being made a defendant was entitled to have his motion sustained. It is further held by the above cited cases that the fact that contraband goods may be found as the result of an illegal search, the search can not be made legal by such discovery.

The Supreme Court of Illinois in *People* v. *Dalpe,* 371 Ill. 607, 612, holds that Section 6 of Article II of the State Constitution and the Fourteenth Amendment of the Federal Constitution were identical in the protection of citizens from illegal search and seizure and states (p. 612):

> "If property, private documents and the like, can be seized, held and used in evidence against a citizen without compliance with the constitutional safeguards, such safeguards are of no value and may as well be stricken from the constitution. However, praiseworthy may be the efforts of officers to bring guilty persons to punishment, they are not to be aided by the sacrifice of any one of the Bill of Rights, for in such a case the officer becomes a law breaker, and the fact that, in many instances, he is beyond the reach of the citizen to punish, makes his actions all the more reprehensible. These sections of the State and Federal constitutions were intended to secure the citizen in person and property against unlawful invasion of the sanctity of his home by officers acting under legislative or judicial sanction. *The protection of those sections extends equally against the action of all officers*

of the law, and when courts sanction proceedings of that sort they are guilty of manifest neglect even of open defiance of prohibition of the constitution intended to protect the people against unauthorized and high-handed action of government agents.'' (Emphasis ours.)

The court cites decisions of this Honorable Court as authority among them, *Weeks* v. *U.S.*, 232 U.S. 383; *Adams* v. *New York*, 192 U.S. 585; *Gouled* v. *U.S.*, 255 U.S. 298; *Amos* v. *U.S.*, 255 U.S. 313.

This case does not involve the weight of the evidence concerning the illegal search and arrest because the undisputed testimony of the officer who made the arrest clearly shows a total absence of probable cause and also expressly shows that the search and seizure was made on bare suspicion; that the arrest of the petitioner was on bare suspicion.

The case of *People* v. *Dalpe*, 371 Ill. 607, contains an exhaustive statement of the law of the State of Illinois and of the United States, and holds that an unlawful search can not be justified by what is found in the search, but if the search be unlawful in the beginning it is not made lawful by the discovery of certain contraband articles. This statement of the law is supported by cited decisions of the State of Illinois and of this Honorable Court.

It must be admitted that no facts appear justifying the arrest and search of the petitioner. He had not been identified or suspected as participating in any particular crime and particularly the crime of tampering with an automobile. The arresting officer had no description or other information tending to justify his suspicion that he was implicated in any particular crime. It can not be said that anything was known to the officers or suspected by them reasonably to indicate that a man, answering the description of any of the men alleged to have been tamper-

ing with an automobile in Hamilton Avenue and the petitioner was so well under the influence of intoxicating liquor that he fell out of the automobile on the ground when the door of the automobile was opened. There is no evidence that he was able to arise after the fall or whether the officers were compelled to pick him up from the ground. *People* v. *Henneman*, 373 Ill. 603, 606. It is contended that every arrest on bare suspicion is unlawful.

In *People* v. *De Luca*, 343 Ill. 269, the Supreme Court of Illinois in reversing a conviction because a motion to suppress had been denied recited in its opinion the fact that the officer had observed feathers sticking out of the pockets of the defendant and had been informed that someone on the train had violated the game laws prohibiting the possession of a hen pheasant at a time when such possession was a criminal offense. The officers searched the defendant after which it was discovered that the defendant had in his possession a hen pheasant. The court held that such search was illegal and that all evidence secured by such illegal search should be suppressed. At page 271 the court states:

> "* * * Where there is no probable cause and the person is searched without a warrant in an effort to discover evidence, and an arrest is afterwards made solely on the strength of the discovery, the evidence thus obtained is violative of his constitutional rights and should be suppressed, on motion duly made for that purpose (Citing cases).
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> "The inherent right of all citizens to immunity from unreasonable search and seizure is guaranteed by both state and federal constitutions. This right was violated by an unlawful search of the defendant without a warrant and before his arrest. The criminal court erred in denying defendant's petition to suppress the evidence, etc."

In the case at bar nothing could be seen in the locked trunk until after the officers had unlawfully taken from

the person of the petitioner his keys and unlocked the trunk. After unlocking the trunk and searching the same goods were found which later turned out to be contraband. The petitioner was not arrested until after this illegal search of his automobile and his person. Certainly the petitioner had a right to rely upon the previous applicable decisions of the Supreme Court of Illinois and of this Honorable Court.

In the case at bar if this decision is allowed to stand, the rights of all American citizens will be in jeopardy as officers will search on bare suspicion, arrest on bare suspicion, and the constitutional guarantee will be considered for naught.

The rights of the petitioner under the Fourteenth Amendment were ruthlessly violated. He claimed a violation of his constitutional rights in the highest court of the state and has no other remedy except to appeal to this Honorable Court to protect his federal constitutional rights as an American citizen as guaranteed by Section 1 of the Fourteenth Amendment.

B.

The Supreme Court of Illinois erred in refusing to follow the applicable decisions of this Honorable Court relative to the rights of the petitioner under Section 1 of the Fourteenth Amendment.

An American citizen is entitled under Section 1 of the Fourteenth Amendment to the rights and immunities guaranteed thereunder. The right to freedom from arrest on bare suspicion is one of the rights guaranteed under the Fourteenth Amendment. The right to have his property free from a search on bare suspicion is a right guaranteed by the Fourteenth Amendment. The right to have his person free from search on bare suspicion by police

officers is a right guaranteed by the Fourteenth Amendment. The undisputed evidence in the case at bar of Police Officer Rosensweig on the motion to suppress the evidence (R. p. 8) clearly shows that these federal constitutional rights of the petitioner were violated by the illegal search of the person and automobile trunk of the petitioner and his subsequent arrest. All of such actions were without warrant or authority of law and while the petitioner was not violating any law, but solely on bare suspicion as testified to by the officer.

The rights of a citizen guaranteed by the Fourteenth Amendment of the Federal Constitution can only be protected by this Honorable Court granting the petition for certiorari and again stating the law applicable to such illegal and unlawful arrest of a citizen and search and seizure as shown by the undisputed evidence in the case at bar.

C.

When the Cause Is Remanded With Directions.

In *Wilson* v. *Fisher*, 369 Ill. see 538, at page 541, the Court said:

> "Where a cause is remanded by the Appellate Court with specific directions to the Circuit Court to enter a particular order or decree, that court has no discretion in the matter, but has a positive duty to enter the order or decree in accordance with the directions. When the mandate of an Appellate Court directs the entry of a decree, the lower court must conform its actions to the directions given in the mandate and must enter a decree in accord with such mandate.
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> Citing: *People* v. *DeYoung*, 298 Ill. 380; *Fisher* v. *Burks*, 285 id. 290; *Prentice* v. *Crane*, 240 id. 250.

"In *People* v. *Scanlan*, 294 Ill. 64, we said: 'It is the duty of the lower court to follow and obey the mandate of a court of review which gives specific directions for the entry of an order or decree. It is the mandate that governs and not the opinion, and where the mandate gives precise and unambiguous directions they must be obeyed.' The duty to enter a decree in accord with the mandate of the reviewing court may be enforced by mandamus."

Citing: *People* v. *DeYoung*, *supra*: *People* v. *Scanlan*, *supra*.

CONCLUSION.

It is respectfully submitted that the decision of the Supreme Court of Illinois in the instant case in conflicting with the applicable decisions of this Honorable Court and of the long unbroken line of decisions by the Supreme Court of Illinois, if permitted to stand will create much confusion and great uncertainty as to the rights of American citizens under the Fourteenth Amendment of the Federal Constitution, therefore it is respectfully requested that this Honorable Court will grant the petition for a writ of certiorari as prayed for therein.

Respectfully submitted,

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